

JAN 05 2010

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA)	Criminal Action No. 7:05-cr-00060-1
)	
v.)	<u>2255 MEMORANDUM OPINION</u>
)	
MARTY BROWN,)	By: Hon. James C. Turk
Petitioner.)	Senior United States District Judge

Marty Brown, a federal inmate proceeding pro se, filed a motion for reconsideration of the memorandum opinion and order dismissing his 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence as untimely filed. Petitioner filed the motion to reconsider more than thirty days after the court dismissed his motion to vacate. Therefore, the court considers the motion made pursuant to Rule 60 of the Federal Rules of Civil Procedure.

A motion under Rule 60(b) is timely when “filed within a reasonable time” or within one year for mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence; or fraud, misrepresentation, or an opposing party’s misconduct. Fed. R. Civ. P. 60(c)(1). A motion for reconsideration that “is nothing more than a request that the district court change its mind” is not authorized by Rule 60(b). United States v. Williams, 674 F.2d 310, 313 (4th Cir. 1982). Petitioner argues that the court erred in its calculations because he is entitled to ninety days to appeal to the United States Supreme Court for ninety days. However, petitioner is not entitled to ninety days to appeal because he did not appeal his criminal judgment to the United States Court of Appeals. Therefore, his conviction became final ten days after its entry. Therefore, the court does not find that petitioner is entitled to relief from the order dismissing his motion to vacate. Accordingly, it is hereby

ORDERED

that petitioner's motion to reconsider (docket #136) is **DENIED**.

The Clerk is directed to send copies of this order to the petitioner and counsel of record for the United States.

ENTER: This 5th day of January, 2010.



Senior United States District Judge